

SOUTH DAKOTA BOARD OF NURSING

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IN THE MATTER OF THE
LICENSURE PROCEEDINGS

RE: MICHAEL J. WEBER, R.N.
License No. R-027731

CORRECTED*
STIPULATION AND ORDER

Licensee.

* * * * *

WHEREAS, MICHAEL J. WEBER, R.N., ("Licensee"), is licensed to practice nursing as a registered nurse in the State of South Dakota and holds License number R-027731; and

WHEREAS, said Licensee, during the term of his licensure while employed at Belle Fouché Health Care Center, Belle Fouché, South Dakota, admitted that he reported to work with a blood alcohol content later measured at .157; and

WHEREAS, in connection with said actions, Licensee has admitted that such conduct would constitute grounds for disciplinary or corrective action under SDCL § 36-9-49(5), (7) ^{and} (10) ^{and} ~~(11)~~, and may be inconsistent with the health or safety of the persons entrusted to his care, and violates the statutes, rules and regulations of the practice of nursing, and is a violation of SDCL § 36-9-49(5), (7) ^{and} (10) ^{and} ~~(11)~~; and

WHEREAS, the Licensee recognizes and agrees that these matters are of a nature which would constitute grounds for the discipline of his license to practice nursing in South Dakota under SDCL § 36-9-49; and

WHEREAS, the South Dakota Board of Nursing (hereinafter "the Board") has a statutory obligation to protect the public health,

*Corrected to reflect typographical error of improper Code reference.

[Handwritten mark]

safety and welfare set forth in SDCL § 36-9, including the protection of the public from unsafe nursing practices and practitioners; and

WHEREAS, in the event the Board, in its discretion, does not approve this settlement or a lesser remedy than indicated in this settlement, this Stipulation is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced by either party. Licensee agrees that if the Board rejects this Stipulation and this case proceeds to hearing, Licensee will assert no claim that the Board was prejudiced by its review and discussion of this Stipulation or any of the records or information relating hereto; now, therefore,

IT IS HEREBY STIPULATED THAT THE BOARD MAY ENTER ITS ORDER AS FOLLOWS:

1. That the Board has jurisdiction over the person of the Licensee and the subject matter of this Stipulation.

2. That said Licensee, during the term of his licensure while employed at Belle Fouché Health Care Center, Belle Fouché, South Dakota, admitted that he reported to work with a blood alcohol content later measured at .157 G/DL; and Licensee has admitted that such conduct would constitute grounds for disciplinary or corrective action under SDCL § 36-9-49(5), (7), (10) and (11), and may be inconsistent with the health or safety of the persons entrusted to his care, and violates the statutes, rules and regulations of the practice of nursing, and is a violation of SDCL § 36-9-49(5), (7), (10) and (11); and the Licensee recognizes and

agrees that these matters are of a nature which would constitute grounds for the discipline of his license to practice nursing in South Dakota under SDCL § 36-9-49.

3. The Licensee has been given an opportunity to discuss this Stipulation and Order with an attorney of Licensee's choice, and is aware of Licensee's right to a hearing in this matter, and all rights under the United States and South Dakota Constitutions, laws, rules and/or regulations. Licensee hereby voluntarily waives all such rights to a hearing, notice, appearance, or any other rights under said Constitutions, laws, rules and/or regulations. Licensee is entering into this Stipulation and Order voluntarily and without duress or compulsion. Licensee also agrees that the Board's Executive Secretary or his designee may present this Stipulation to the Board and disclose to the Board all items of his investigation, including, but not limited to, any communications with Licensee.

4. That the Licensee's license to practice nursing in South Dakota is placed on a probationary status for a period of two (2) years as active practice as a nurse in the employment in the nursing practice from the date of this Order being approved by the Board, which probationary terms and conditions shall be completely followed by the Licensee as follows:

C O N D I T I O N S:

1. Licensee will notify the Board of any employment in the healthcare field, including changes in employment. Furthermore, the Licensee will inform any current or prospective employer with whom he seeks employment as a nurse, as to the subject matter and the nature of the proceedings and the Stipulation, and would further agree that any such employer

would, during the first year of probation, be required to provide quarterly reports to the Board as to his progress as an employee, and during the balance of the probationary period provide reports on a basis of every six (6) months. The reports shall provide and/or address:

- a) In the first report, evidence that Licensee's supervisor has received a copy of the order within ten (10) days of service or within ten (10) days of Licensee beginning a new employment;
 - b) Licensee's attendance and reliability;
 - c) Licensee's ability to practice professional nursing;
 - d) Licensee's ability to carry out assigned functions;
 - e) Licensee's ability to handle stress;
 - f) Licensee's ability to maintain professional patient boundaries;
 - g) Number of hours Licensee worked during the reporting period;
 - h) Any other information which the supervisor believes would assist the Board in its ultimate review of the case.
2. Before Licensee is employed by any temporary or travelling agency, he will notify the Board of his proposed employment with a plan for safeguards for consistent supervision and monitoring. The assignment must be a minimum of three (3) months' duration and provide for consistent supervision and monitoring safeguards. If the Board does not approve the plan, which approval shall not be unreasonably withheld, the Licensee shall not be employed in a temporary or travelling agency for the duration of the probation.
3. Licensee shall observe the following employment restrictions:
- a) May not hold a charge or supervisory position for one (1) year; and
 - b) May only practice under on-site supervision of a licensed nurse, preferably a registered nurse, in good standing with the Board of Nursing in the State of practice for a minimum of one (1) year. The supervising nurse shall be primarily one (1) person, who may periodically delegate to other qualified personnel.
4. Licensee shall arrange with the Board staff probationary meetings once every three (3) months during the first year of

probation. Thereafter, probationary meetings will be arranged by the Licensee every six (6) months for the balance of the probationary period. Probationary meetings may be held by telephone. It will be the obligation of the Licensee to schedule these meetings at such time and place as the Board staff would reasonably designate.

Furthermore, the Licensee will submit a self-evaluation report to the Board office prior to each probationary meeting. The report shall provide and/or address:

- a) Licensee's use of alcohol and any over-the-counter drugs and/or other drugs prescribed by a physician or dentist, and the circumstances surrounding any use while the Stipulation is in effect;
 - b) Licensee's professional employment status, including employer support, peer support, ability to handle stress and management of controlled substances;
 - c) Licensee's future professional goals for nursing;
 - d) Licensee's future personal goals; and
 - e) Any other information which the Licensee believes would assist the Board in it's ultimate review of the case.
5. Licensee shall at any time during the period of probation, the Licensee will submit to such testing of body fluids, on a random basis, as may reasonably be requested by the Board, within four (4) hours of the request by the Board, with the understanding that if such tests would ever indicate the use of a non-prescribed controlled substance or alcohol, that the Licensee would then agree to a total and complete revocation of his licensing rights as a nurse in South Dakota. The blood and/or urine screens shall be:
- a) Observed in their drawing;
 - b) Handled through legal chain of custody methods;
 - c) Paid for by Licensee;
 - d) Results reported directly to the Board.

Testing must meet forensic compliance panel standards and include testing for Amphetamines, Barbituates, Cocaine, Opiates, Benzodiazepines, Cannabinoids, Alcohol, Methadone and Propoxyphene.

6. The Licensee shall at any time during the period of probation on reasonable notice report in person to such meetings of the

Board or to its designated representatives at his request or because of allegations of violation of this probation and report by telephone at any time at any Board meeting, and otherwise fully cooperate with the Board or its representatives in the terms of this probation.

7. Licensee shall not violate any law or regulation regarding the practice of nursing.
8. Licensee shall abstain completely from the personal use of alcoholic beverages.
9. Licensee shall abstain completely from the personal use or possession of controlled substances as defined in the South Dakota law, and dangerous drugs as defined by law, or any drugs requiring a prescription, except as otherwise provided for herein.
10. Licensee shall execute all release of information forms from employers or treatment centers for substance abuse as may be required by the Board or its designee, except as might violate the attorney-client privilege.
11. Licensee shall, within ten (10) days from the effective date of this Order, submit his current renewal certificate to the Board office to be stamped "PROBATION."
12. Licensee shall notify the Board, by telephone, in writing, or by fax within one (1) week of any change in nursing employment, personal address and/or telephone number. If notice is provided by telephone, it shall be followed within five (5) days by writing or fax transmittal. Licensee agrees that his permanent mailing address is 803 Flint, Laramie, Wyoming 82070, and all mail should be sent to this permanent address rather than his temporary duty stations unless written notice is received by the Board of a permanent address change.
13. Licensee shall pay for all costs and expenses in carrying out any conditions of the probation; it being agreed that costs and expenses in carrying out conditions of this probation do not include the Board's attorneys' fees, per diem, or travel costs.
14. Before any out-of-state practice or residence can be credited toward fulfillment of these terms and conditions, they must first be approved by the Board, which approval shall not be unreasonably withheld. If Licensee fails to receive such approval, none of the time spent out-of-state will be credited to the fulfillment of the terms and conditions of this Order.
15. In the event that the Licensee does not work in nursing within two (2) years of the effective date of the Order, Licensee may

petition the Board for reevaluation of the probationary conditions.

16. If any condition of this probation is violated, the Licensee agrees that the Board may take such actions as the Board deems necessary up to and including a total and complete revocation of Licensee's licensing rights as a nurse in South Dakota. This hearing waiver applies only to the charges described herein (paragraph 2 above), leading to probation and not to any probationary violations, it being agreed that Licensee would have notice and opportunity to be heard before any probation violations were found, but Licensee agrees that any violation of these probationary terms, if found by the Board, could result in other and further discipline up to and including revocation of Licensee's South Dakota nursing license.
17. If Licensee obtains a license issued solely or under joint regulatory powers by the Board other than the license to which this Stipulation refers in the above-captioned paragraphs, at any time during the period of probation, the terms of this probation shall apply to the other or additional license(s) issued by the Board.

5. It is further stipulated and agreed that this Stipulation is being entered into voluntarily by the Licensee and without threats or coercion and is entered into after the Licensee has been given ample opportunity to consider these matters and to discuss this Stipulation with an attorney of his choice and that the Licensee has a full understanding of the legal consequences of this Stipulation and of the Licensee's rights to a formal hearing on these matters, which rights are hereby waived by the signing of this Stipulation.

NOW, THEREFORE, the foregoing Stipulation and Order is entered into and is respectfully submitted to the Board with the request

that the Board adopt its terms as an order of the Board in the above matter.

Dated this 19 day of January, 1996.

Michael J. Weber
MICHAEL J. WEBER, R.N., Licensee

APPROVED AS TO FORM:

Cary R. Alburn, III
Cary R. Alburn, III
869 N. 4th St.
Laramie, WY 82070
Attorney for Licensee

The South Dakota Board of Nursing meeting on the 31 day of January, 1996, (approved) (rejected) the attached Stipulation (as written) (with the following modifications):

and issued its order of probation consistent herewith as follows:

IT IS HEREBY ORDERED that the above Stipulation is adopted shown herein by the South Dakota Board of Nursing this 31 day of January, 1996, by vote of 9-yes; 2-absent.

Diana Vander Woude RN, MS
Diana Vander Woude, Executive Secretary